is an offer, it is no more assignable than an ordinary revocable offer. This reasoning overlooks the fact that the giver of the option, unlike the other offeror, has already bound himself to sell the land; and this contract of sale into which, at the will of the holder of the option, the option will ripen, will be freely assignable. As the decision in the principal case, therefore, in no wise protects the giver of the option, it appears simply to place a useless clog on the freedom of business transactions. The reasoning of the case seems, indeed, to furnish an example of one of those super-refinements of legal logic which courts generally recognize merely to dismiss. The case finds some support in the analogy of the Rhode Island doctrine that the right of the holder of an option is not descendible,[7] a rule, however, only less exceptional than that in the principal case.[8]

---

NATURE OF A LANDOWNER'S RIGHT TO KILL GAME. — In the Roman law the ownership of animals *ferae naturae*, even when upon private land, was in the inhabitants of the state in common; in the English law it was in the sovereign as representative of the people.[1] Although a landowner acquired property in animals killed upon his land, the state, by virtue of its ownership of the animals when alive, controlled the privilege of killing them.[2] It has, therefore, been suggested that a landowner's right to shoot game upon his own land is not an interest in property, but merely a license granted at the discretion of the state and revocable at any time. As the inhabitants of the state are owners in common of the wild animals, non-residents may be excluded from the privilege of shooting them for the reason that they have no title.[3] A recent Arkansas case refused to adopt this theory. A statute forbade non-residents to shoot and fish in the state. The defendant, a non-resident, who owned land in the state, pleaded that the statute violated the Fourteenth Amendment in that, by depriving him of a property right which other proprietors enjoyed, it failed to afford him the equal protection of the law. The court sustained his contention. *State* v. *Mallory*, 83 S. W. Rep. 955.

There seems to be no reason in the nature of things why the state originally, as owner of both land and wild animals, should not have granted the land and withheld the right to shoot the animals. But the weight of authority is clear that the state made no such reservation. In England a man has a common law right to shoot game on his land, and this he possesses *ratione soli*.[4] It is recognized as a property right which may be granted to others, who thereby acquire a *profit à prendre*, a distinct interest in the land.[5] Similarly, the Supreme Court of Canada has held that the right of a riparian landowner to fish on non-navigable waters is an exclusive right attached to his interest in the land, and that an attempt of the state to grant a license to one landowner and not to another was an arbitrary interference with property

---

[7] Newton *v.* Newton, 11 R. I. 390.
[8] See McCormick *v.* Stephany, 57 N. J. Eq. 257.

[1] Inst. Just. bk. 2, pt. 1, § 12; 2 Bl. Com. 414.
[2] 2 Bl. Com. 410.
[3] See Geer *v.* Connecticut, 161 U. S. 519; Magner *v.* People, 97 Ill. 320.
[4] Coke, 4 Inst. 304; Keble *v.* Hickringill, 11 Mod. Rep. 75. See Blades *v.* Higgs, 11 H. L. Cas. 621, 630.
[5] Webber *v.* Lee, 9 Q. B. D. 315.

rights.[6] Some jurisdictions in the United States have decisions to the same effect.[7]

It is true that although the landowner has a property right, the state may absolutely suspend it by the exercise of its police power in order to preserve a necessary food supply. Under such circumstances, however, the inherent right would still exist and would revive the moment the restriction were removed, and the law would bear equally upon all. But if the landowner has only a revocable license, the state could withdraw the privilege arbitrarily from all or any, and could grant it again to a few, with or without charge. Public policy alone should forbid the adoption of a rule making possible so rude a departure from established practice.

---

CHARACTER OF THIRD PERSONS AS EVIDENCE OF THEIR ACTS. — Whatever may be the probative value of character evidence in general, it is usually inadmissible where offered merely to prove or disprove an act.[1] This rule, however, is not without exceptions. Thus, the accused in criminal trials is permitted to offer evidence of his good character, although the prosecution may attack his character only in rebuttal. And in certain cases where the act of a person not a party to the suit becomes material, established usage sanctions the admission of character evidence. In statutory prosecution for adultery, for instance, evidence of the moral character of the person with whom the defendant is alleged to have committed the act, is held admissible.[2] And when bastardy is in issue, the character of the mother may be shown.[3] Similarly, evidence of the character of animals is held competent as bearing on the commission by them of alleged vicious acts.[4] In homicide cases, where the plea is self-defense, it has been said that evidence of the character of the deceased is admissible to support testimony that he actually attacked the defendant.[5] There are many *dicta* and a few decisions to this effect. The majority of courts, however, still emphasize the necessity of proving the defendant's knowledge of the character of the deceased, which would indicate that such evidence is admissible only to show reasonable apprehension on the part of the accused.[6]

A late Texas case is typical of the tendency of some courts to extend the scope of these exceptions. The defendant, for the purpose of reducing a homicide to murder in the second degree, testified that he had found the deceased in adultery with his wife, the daughter of the deceased. The court admitted evidence of the vicious character of the deceased as tending to show the offense charged against him. *Orange* v. *State*, 83 S. W.

---

[6] Venning *v.* Steadman, 9 Can. Supreme Ct. R. 206.

[7] Payne *v.* Sheets, 55 Atl. Rep. 656 (Vt.).

[1] Thayer, Prel. Treat. Ev. 525.

[2] Blackman *v.* State, 36 Ala. 295; Commonwealth *v.* Gray, 129 Mass. 474. But see Guinn *v.* State, 65 S. W. Rep. 376 (Tex.).

[3] Pendrell *v.* Pendrell, 2 Stra. 924; Fall *v.* Overseers, etc., Augusta Co., 3 Munf. (Va.) 495.

[4] Broderick *v.* Higginson, 169 Mass. 482. Compare also with the foregoing exceptions, Rowt's Adm'r *v.* Kile's Adm'r, Gilmer (Va) 202; Marble *v.* Marble, 36 Mich. 386.

[5] Wigmore, Gr. Ev. 38; 1 Wigmore, Ev. 63, and cases cited. *Cf.* Chase *v.* State, 46 Miss. 683.

[6] De Arman *v.* State, 71 Ala. 351; State *v.* Hensley, 94 N. C. 1021; People *v.* Rodawald, 177 N. Y. 408.